

## **REMARKS**

### **I. Status of the Claims**

Claim 38 has been cancelled without prejudice and without disclaimer. Claims 3 and 39 have been amended without prejudice and without disclaimer. No new claims have been added. Claim 42 has been withdrawn, but is available for rejoinder upon the allowance of a generic claim.

Claims 3, 9, 39-41, 43, and 63 are presently pending in the case, with claim 42 withdrawn, but available for rejoinder upon the allowance of a generic claim.

### **II. Support for the Amended Claims**

Support for the amendments to claim 3 and 39 may be found throughout the specification and claims as originally filed.

Specific support for the amendment to claim 3 may be found at least in part in claim 1 as originally filed.

Specific support for the amendment to claim 39 may be found at least in part in claim 39 as originally filed.

It will be understood that no new matter is included in the amendments to claims 3 or 39.

### **III. Rejection of Claims 3, 9, 38-41, 43 and 63 under 35 U.S.C. §112**

The Action first rejects claims 3, 9, 38-41, 43 and 63 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement.

The Action states that there is not sufficient written description for "nucleotide sequences (1) which hybridize under moderate stringency conditions or (2) derived by in vitro mutagenesis

of SEQ ID No: 3" (the Action at page 2) or "sequences which are made of 'at least a portion of or an 'active portion' of s [sic] polypeptide of SEQ ID No: 4" (the Action at page 3). Although Applicants are not in agreement with the present rejection, solely in order to progress the case more rapidly to allowance claims 3 and 39 have been amended to remove the above-referenced terms. Since the Action admits that "(t)he written description in this case only sets forth an isolated protein of SEQ ID No: 4 or a polypeptide encoded by a nucleic acid sequence of SEQ ID No: 3" (the Action at page 2), the currently pending claims are fully in compliance with the written description requirement under 35 U.S.C. § 112, first paragraph.

Applicants therefore respectfully request that as the rejection of claims 3, 9, 38-41, 43 and 63 under 35 U.S.C. § 112, first paragraph, has been overcome, the rejection be withdrawn.

#### **IV. Rejection of Claim 38 under 35 U.S.C. §112**

The Action next rejects claim 38 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement.

Although Applicants are not in agreement with the present rejection, solely in order to progress the present case more rapidly to allowance, claim 38 has been cancelled herein without prejudice and without disclaimer. Therefore, the rejection of claim 38 under 35 U.S.C. § 112, first paragraph, has been rendered moot.

Applicants respectfully request that as the rejection of claim 38 under 35 U.S.C. § 112, first paragraph, has been rendered moot, the rejection be withdrawn.

**V. Rejection of Claims 3, 9, 38-41, 43 and 63 under 35 U.S.C. §112**

The Action next rejects claims 3, 9, 38-41, 43 and 63 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement.

The Action states that "the specification, while being enabling for (i) an isolated polypeptide of SEQ ID No: 4, (ii) a peptide sequence encoded by a nucleic acid molecule of SEQ ID No: 3 or a nucleotide sequence which is completely complementary thereto, it does not reasonably provide enablement for a vaccine composition comprising a portion of seq id 4, a method of treating comprising the administration of an 'active portion' of SEQ ID No: 4, nor an isolated polypeptide encoded by a nucleic acid capable of hybridizing under moderate stringency conditions to SEQ ID No: 3" (the Action at page 8). Although Applicants are not in agreement with the present rejection, solely in order to progress the case more rapidly to allowance claim 38 has been cancelled herein without prejudice and without disclaimer, and claims 3 and 39 have been amended to remove the above-referenced terms. Therefore, the currently pending claims are fully in compliance with the enablement requirement under 35 U.S.C. § 112, first paragraph.

Applicants therefore respectfully request that as the rejection of claims 3, 9, 38-41, 43 and 63 under 35 U.S.C. § 112, first paragraph, has been overcome, the rejection be withdrawn.

**VI. Rejection of Claims 3, 9, 38-41, 43 and 63 under 35 U.S.C. §102(b)**

The Action rejects claims 3, 9, 38-41, 43 and 63 under 35 U.S.C. § 102(b), as allegedly anticipated by Racie-Collins and LaVallie (International Patent Application Publication No. WO 00/59938; "Racie-Collins"). Applicants respectfully traverse.

Applicants note that solely in order to progress the present case more rapidly to allowance, claim 38 has been cancelled herein without prejudice and without disclaimer, and


claims 3 and 39 have been amended to recite a polypeptide encoded by SEQ ID NO:3 and the polypeptide sequence of SEQ ID NO:4, which are neither taught nor suggested by Racie-Collins. Therefore, the presently pending claims cannot be anticipated by Racie-Collins.

Applicants therefore respectfully submit that as the rejection of claims 3, 9, 38-41, 43 and 63 under 35 U.S.C. § 102(b), has been overcome, the rejection should be withdrawn.

## VII. Conclusion

Applicants believe this Response to be fully responsive to all outstanding issues, and to place this application in condition for allowance. Reconsideration of the application and allowance of the pending claims is respectfully requested. If the Examiner has any questions or comments regarding any issue associated with this application a telephone call to the undersigned representative is welcome.

Respectfully submitted,



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